

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EF
DF

-----X
ERNEST E. MASTROIANNI,

Plaintiff(s),

REPORT AND RECOMMENDATION

-against-

CV 02-0846 (ADS) (ETB)

EDWARD REILLY, et al.,

Defendant(s).

-----X

TO THE HONORABLE ARTHUR D. SPATT, United States District Judge:

Based on the joint request of all parties, it is recommended that this action be administratively closed until the plaintiff's release from federal incarceration presently scheduled for April 2007.

The reason for this request is that the plaintiff's incarceration is adversely affecting the defendants' rights to conduct examination(s) pursuant to Rule 35, Fed. R. Civ. P., and adding additional costs and expenses to deposition discovery of the plaintiff.

It is further recommended that any party may move to restore this action to the active docket within ninety (90) days of the plaintiff's release.

All parties in this action are represented by counsel.

CONCLUSION

This action should be administratively closed until April 30, 2007, with leave of any party to reinstate this action to the active docket, provided that such application is made within ninety (90) days of the latter date.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any objections to this Report and Recommendation must be filed with the Clerk of the Court

with a copy to the undersigned within 10 days of the date of this report. Failure to file objections within the specified time waives the right to appeal the District Court's order. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 115 S.Ct. 86 (1994); Frank v. Johnson, 968 F.2d 298 (2d Cir.), cert. denied, 113 S.Ct. 825 (1992); Small v. Secretary of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989)(per curiam).

Dated: Central Islip, New York
September 7, 2006

/s/ E. Thomas Boyle

E. THOMAS BOYLE

United States Magistrate Judge

The Court adopts this recommendation in its entirety. The Clerk of the Court is directed to administratively close this case.
SO ORDERED.

ARTHUR D. SPATT U.S.D.J.
9/15/06